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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 11th March 2025

**S.R.O. No. 169/2025**— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated 24th February 2025 passed in the I.D. Case No.01 of 2019 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Odisha Power Generation Corporation Ltd., At Zone-A, 7th Floor, Fortune Towers, Chandrasekharpur, Bhubaneswar-751023 and Shri Balunkeswar Mohapatra & 38 others represented through O.P.G.C. Employee Union, Regd. Office At Plot No. 151, Sahid Nagar, Bhubaneswar- 751007 was referred for adjudication is hereby published in the schedule below.

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 01 of 2019

Dated the 24th February 2025

*Present :*

Shri Benudhar Patra, B.Sc. LL.M.,  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of  
Odisha Power Generation Corporation Ltd.  
At Zone-A, 7th Floor, Fortune Towers,  
Chandrasekharpur,  
Bhubaneswar- 751023.

. . First Party—Management

And

Shri Balunkeswar Mohapatra &  
38 others represented through  
O.P.G.C. Employee Union,  
Regd. Office At Plot No. 151,  
Sahid Nagar, Bhubaneswar- 751007.

. . Second Party—Workmen

**Appearances :**

Shri Subrat Mishra, Advocate	.. For the 1st Party Management
Shri Sushanta Dash, Advocate	.. For the 2nd Party Workmen

**AWARD**

The Government of Odisha in the Labour & E.S.I. Department, in exercise of its powers conferred under sub-section (5) read with Clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") have referred the following schedule for adjudication by this Tribunal vide Order No. IR-ID-73/18-854/LESI, dated the 11th July 2019.

**SCHEDULE**

"Whether the action of the management of M/s. OPGC Ltd., in denying promotion to Shri Balunkeswar Mohapatra and 38 others from Jr. Assistant (Grade W-3) to the post of Sr. Asst. (Grade S-2) w.e.f the 26th October 2002 and subsequent promotions like Sr. Asst. (Grade S-1), S.O. and E.I. w.e.f. the 26th October 2007, 26th October 2011 and 26th October 2015, respectively is legal and/or justified ? If not, what relief the workmen are entitled to ?"

2. Before entering into any discussion on the claim and counter claim advanced by the respective party, a little background of facts involved in the dispute need mention. It reveals from the failure report attached to the order of reference that on 6th November 2017 the 2nd party union made a grievance petition to the Labour Commissioner Odisha, Bhubaneswar with a copy to the Managing Director of the 1st party stating therein that despite completion of five years in the post of Jr. Asst. (Grade- W3) the aggrieved workmen involved herein have not been promoted to the post of Sr. Asst. (Grade-S2) although the management has promoted a number of Jr. Assistants of W3 Grade as Sr. Assistants (S2 Grade) in due course and also by virtue of orders of the Hon'ble High Court. Further, it was pointed out by the 2nd party that when the management was apprised during the year 2002, it effected promotion of Jr. Assistants of W-3 Grade to W-4 Grade without change of the designation, which according to the 2nd party union is lower grade than S-2 and further they were deprived of the subsequent promotion to the post of Sr. Asst. (Grade-S1), S.O. and E.I. As the 1st party remained firm in its action and submitted that the allegations contained in the grievance petition has no merit at all, there could not be a settlement of the dispute and ultimately the Conciliation Officer- *cum*-Joint Labour Commissioner, Odisha, Bhubaneswar, on failure of conciliation, submitted a failure report which culminated into the present reference.

3. Pursuant to the reference, the 2nd party union filed its claim statement stating therein, *inter-alia*, that the members involved in the present 'lis' are the employees of the 1st party and they have joined the organization on different dates. It is stated that as the management promoted some Jr. Assistants to the post of Sr. Assistants i.e. from Grade-W3 to Grade-S2 in the year 1994, who were similarly situated employees like the 2nd party members but did not pay any heed to give such benefits to its members, the dispute after failure of conciliation was referred for adjudication to this Hon'ble Tribunal. In support of the Claim, it is pleaded that in the year 1994 the first party vide Order No.865, dated the 29th January 1994 promoted 21 Junior Assistants to the rank of Senior Assistants and being aggrieved with such promotion order, Shri Jayasena Patra and five others approached the Hon'ble Court in OJC No.15035 of 1996 on the ground that juniors to them having

got promotion to the post of Senior Assistants, they should accordingly be promoted with effect from the date on which their juniors were promoted and as a consequence thereof the Hon'ble Court vide judgment dated the 9th October 2013 quashed the order dated the 29th January 1994 and directed the management to give promotion to Shri Jayasena Patra and five others w.e.f. the 29th January 1994 without having any arrear salary, but granted seniority and other retiral benefits. Similarly, it is pleaded, the management has promoted one Shri Sushil Kumar Barik from Junior Assistant in Grade-W3 to Senior Assistant in Grade-S2 by virtue of order dated the 9th October 2013 of the Hon'ble Court passed in OJC No.5881 of 2000 and many others namely, P.K.Sahani, P.K.Bhanjadeo, K.C.Jena, Renubala Naidu during the period from 1994 to 2014. It is the consistent stand of the Union that after completion of seven years of service in their respective Grade- W3, the disputants should have been promoted to the post of Senior Assistant in Grade-S2, but the management ignoring the previous practice and in contravention of the principles of promotion promoted the disputants from the post of Junior Assistant of Grade-W3 to Grade-W4, which is a lower grade than S-2 during the year 2002 to 2005 taking recourse to the purported OPGC Recruitment and Promotion Rules, which was not made effective to the Junior Assistants who got promotion earlier. It is stated that on account of discontentment amongst the employees, the disputant-union took the matter with the management and after protracted discussion a Minutes of Meeting/Settlement was drawn between the Management of OPGC Ltd. And OPGC Employees Union on 8th May 2006 for revival of the policy i.e. for promotion of Junior Assistant in Grade- W3 to Senior Assistant in Grade-S2 and accordingly it was resolved in Item No.3 of the Minutes of the meeting that the Junior Assistants will be placed directly in Grade-S2 i.e. Sr. Asst. instead of Grade-W4 with retrospective effect because of the precedents. Despite the above, it is pleaded, the case of the disputants were not taken into consideration and they were not only debarred of the benefits of promotion prospects from Grade-W3 to Grade-S2 in the post of Sr.Asst. but also it stood as a barrier for their future promotion. Citing Circular No. 21986-SC/6-31/2000-Gen. dated the 26th June 2000 of the G.A. Department of Government of Odisha, which speaks of the eligibility criteria for a Junior Assistant to become a Senior Assistant on completion of three years of continuous service as Junior Assistant, it is pleaded that although the management by adopting the said circular has promoted 32 nos. of its employees, yet the same was not applied in respect of the disputants. Specifically, it is stated that had the case of the disputants been considered at par with the similarly situated workmen, who were promoted earlier, then they would have been promoted to the post of Sr. Asst. Manager in E-2 Grade as on 26th October 2018 and would have been benefited financially with career prospects and reputation in the society. With the averments as above, the union has prayed for a direction to the management to extend the promotional benefits to the disputants workmen from Jr.Assistant (Grade-W3) to Sr.Asst.(Grade-S2) w.e.f. the 26th October 2002; and subsequent promotions from Grade-S2 to Grade-S1, S.O. and E.I w.e.f. the 26th October 2007; dated the 26th October 2011 and 26th October 2015, respectively following the principle of equity and law.

4. The management at the outset challenged the maintainability of the claim laid on behalf of the disputants by Shri Dhruba Charan Sahoo in his capacity as General Secretary of the Union and the non-application of mind of the Government while making the reference, inasmuch as, the issues referred for adjudication are beyond the subject matter of complaint basing upon which the conciliation was initiated by the labour machinery and further the cause of action never arose within the territorial jurisdiction of this Tribunal. The claim is otherwise pleaded to be bad, barred under the principle of *res subjudice*, acquiescence and principles.

Resisting merit of the claim, it is stated by the management in its written statement that earlier the disputant-union had approached the Hon'ble Court in W.P.(C) No. 5197 of 2002 challenging the Recruitment and Promotion Rules for Non-Executives, 2002 of OPGC Ltd., but later on the union having sought permission to withdraw the writ petition with liberty to individual employee to assail the Rules of the year 2002, the Hon'ble Court vide Order dated the 22nd June 2015 permitted withdrawal of the writ petition with liberty as prayed for by the petitioner. It has further been pleaded that as against the orders of the Hon'ble Court, Writ Appeal No.W.A.(C) 550 of 2015 was preferred by the Petitioner and the same is still subjudice before the Hon'ble Court and in that view of the matter, the Union has no *locus standi* to maintain the present dispute and so also this Tribunal is precluded from proceeding any further in the instant dispute. It is the specific stand of the management that the Recruitment and Promotion Rules for Non-Executives, 2002 of OPGC Ltd. came into effect on 26th October 2002 and has been in vogue for over 17 years and prior to that promotion of the employees was being considered based on requirement and need based. It is stated that a batch of Junior Assistants and Office Assistants were considered for filling-up of higher posts as one time requirement in the year 1992-93 and as a consequence thereof many of the second party members were regularized in the post of Junior Assistant Clerk-cum-Typist after 1994 and therefore, they cannot question the action of the management policy that had considered one-time benefit amongst the employees who were in the employment at the time of consideration of the one-time policy. Besides, it is stated that many of the second party members having reaped the benefit of the Recruitment and Promotion Rules for Non- Executives, 2002(for short, R&P Rules, 2002), the union is now estopped to raise objection over the same at this belated stage i.e., after lapse of almost 24 years and further the dispute espoused by the union cannot be said to be an 'industrial dispute' as the issue of promotion is neither *mala fide* nor victimization, nor it falls within the ambit of the second schedule or third schedule of the Act. It has further been pleaded that the judgment delivered in OJC No.15035 of 1998 is not at all applicable to the present dispute as because the claim involved in the aforesaid Writ Application was relating to determination of seniority for promotion prior to the formation of the R&P Rules, 2002 whereas in the present dispute demand is raised by the second party union for promotion of the disputants from Junior Assistant to S2 Grade skipping one grade in between i.e. W4 Grade by circumventing the R&P Rule, 2002. Disputing the Minutes of the Meeting dated the 8th May 2006 to be a settlement within the meaning of Section 2(p) and Section 18 of the Act read with Rules 64 and 65 of the Orissa Industrial Disputes Rules, 1959, it is stated that by virtue of the minutes of the meeting a Committee was constituted to put forth its recommendation to the OPGC Management for consideration on various labour related issues and the same being presented before the Board of Directors in their 128th meeting held on 8th August 2006 it was decided that the process followed in promotion of Junior Assistants in W3 Grade to W4 Grade would remain unaltered. Further, it is stated that 31 out of the 39 second party members having accepted their promotion from Junior Assistant (W3 Grade) to Junior Assistant (W4 Grade) based on the recommendation of the DPC in different years under the R&P Rules, 2002, there has been no violation of Article 14 and 16 of the Constitution of India as alleged by the second party union, nor there has been any discrimination, *mala fides* or victimization in the matter of promotion of the second party members. With the averments as above, the first party has prayed to answer the reference in the negative as against the second party union.

5. Reiterating its stand taken in the claim statement, the second party union filed a rejoinder to the written statement of the first party challenging its stand regarding maintainability of the reference. It is averred in the rejoinder that forming of opinion by the Government while referring a

dispute for adjudication cannot be said to be mechanical and further there cannot be an estoppel against exercise of fundamental rights of individual employee, particularly when 32 numbers of employees were promoted between 1994 and 2014 by adopting pick and choose method, despite the R&P Rules, 2002 resulting discontentment amongst the employees and such discrimination gave rise to the present dispute which is an 'industrial dispute' within the meaning of the Act. In order to unearth the truth, the second party union in its rejoinder has sought for a direction to the management to produce the Minutes of the Meeting of the Board of Directors dated the 8th May 2006 and the Minutes of 128th Board meeting dated the 8th August 2006. Further assertion of the Union is that the seniority list said to have been published by the management vide notice No.1200/WE, dated the 16th June 2014 reflects the name of Junior Assistants who were on roll of the company as on 29th January 1994, but a perusal of the said list would reveal that the same contained the name of 47 Junior Assistants till 1st October 1992 but deliberately it has not provided the names of the rest 45 Junior Assistants. In the aforesaid background the second party union has claimed its demand to be justified and prayed for grant of relief (s) in favour of its members.

6. On the basis of the pleadings of the parties, the following issues have been settled :—

#### ISSUES

- (i) Whether the action of the of the management of M/s OPGC Ltd., in denying promotion to Shri Balunkeswar Mohapatra and 38 others from Jr. Assistant (Grade W-3) to the post of Sr. Asst. (Grade S-2) w.e.f the 26th October 2002 and subsequent promotions like Sr.Asst. (Grade- S-1), S.O. and E.I. w.e.f. the 26th October 2007, 26th October 2011 and 26th October 2015, respectively is legal and/or justified ?
- (ii) if not, what relief the workmen are entitled to ?

7. In support of their respective stand, both parties adduced oral as well as documentary evidence. While the second party union examined two witnesses on its behalf as WW1 and WW2 and relied on documents marked Exts.1 to 17, the first party examined one Shri Krutibash Padhi, its Manager(HR & Admin.) as MW1 and placed reliance on documents marked Exts. A to F.

#### FINDINGS

8. *Issue No. (i) & (ii)* — Before entering into any discussion on the issues, I would like to deal-with the objections raised by the management on the maintainability of the reference though an issue to that effect has not been framed either at the instance of the management or by this Tribunal.

9. It has been contended by the management that the present union had earlier approached the Hon'ble High Court of Orissa in W.P.(C) No.5197 of 2002 challenging the R&P Rules, 2002 which was subsequently withdrawn at the instance of the Union with liberty to individual employee to assail the said Rules of the year 2002 if he/they at all aggrieved with and therefore, the self-same cause espoused by the Union is not at all tenable; the same being barred under the principle of *res subjudice* giving no scope to this Tribunal to proceed further with the current matter. To substantiate the argument, the first party has filed xerox copy of Order No.9, dated the 22nd June 2015 of the Hon'ble Court passed in W.P.(C) No. 5197 of 2002, marked Ext.B. On the other hand, the learned counsel representing the union submitted that in the aforestated Writ Petition the subject matter was different than that of the present case, inasmuch as, while in the writ petition the Union challenged the violation of provisions of Section 9-A of the Industrial Disputes Act on the



part of the management while formulating the Recruitment Rules and there was no question of claim of promotion of the disputants, the present dispute involves the question of promotion of the disputants and therefore, there was no bar for the disputants to espouse their remedy before the present forum. Referring to Ext. 15, he further submitted that the W.A.No. 550 of 2015 filed against the order of the W.P.(C) has already been disposed of on 27th September 2022.

The management while in one hand challenges the reference under the principles of res-subjudice, but in the other failed to substantiate its stand, inasmuch as, it has not filed the copy of the Writ Petition in W.P.(C) No.5197 of 2002 to meet the stand of the second party union that in fact the union in the said Writ Petition had the same cause of action as is involved in the present dispute. The Union having specifically averred in its claim that prayer in the writ petition was different than that of the present dispute, the management ought to have filed the copy of the Writ Petition so as to sustain its argument. Not being aware of the averments made in W.P.(C)No.5197 of 2002, it is difficult on the part of this Tribunal to hold that the dispute under reference is barred under the principle of *res subjudice*, particularly when as it reveals from the conciliation failure report such a stand was not taken by the management before the Conciliation Officer and further MW1 has admitted in his cross-examination at Para. 51 that the Recruitment & Promotion Rules, 2002 for non-executives(Ext.D) is not a subject matter of challenge in the present dispute.

10. The management has further taken a stand that the dispute under reference does not come within the purview of an 'industrial dispute'. Looking to the grievance of the disputants that from the year 1994 to 2014 around 32 numbers of employees were promoted by the management by adopting pick and choose method and by order of Courts despite the fact that during said period the R&P Rules,2002 was in vogue, but the case of the disputants was not taken into consideration resulting their approach to the labour machinery, I find no reason to hold that the dispute in hand does not come within the purview of 'industrial dispute' within the meaning of the Act. In this connection a reference may be made to the cross-examination part of MW1 wherein he has admitted that the present disputants have claimed promotional benefits from Junior Assistant (W3 Grade) to Senior Assistant (S2 Grade) at par with the promotion given to some of the similarly situated employees in the year 1994.

11. Further, the management has challenged the *locus standi* of Shri Dhruba Charan Sahoo, General Secretary of the Union for filing the present dispute, but in view of statement of MW1 during his cross-examination that he cannot say if the *locus standi* of Dhruba Charan Sahoo, General Secretary of the Union for filing the present dispute has been challenged in any forum and if the maintainability of the present reference has ever been challenged before this Court, the plea taken on this score is found to be no way helpful to the management.

12. Next, it is contended on behalf of the management that the Government having travelled beyond the subject matter of complaint petition of the union dated the 26th December 2015, the reference is not maintainable. The learned counsel for the union resisting the submission has contended that the validity of a reference cannot be questioned by the Tribunal and to fortify his argument has cited a decision of the Hon'ble Apex Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and others, reported in AIR 2000 SC 469, wherein the Hon'ble Apex Court have held that Industrial Tribunal is the creation of the Statute and it gets jurisdiction on the basis of a reference. It cannot go into the question of validity of the reference. Taking into consideration the arguments advanced on the point, I am in complete agreement with the learned counsel for the second party union that the Tribunal being a creation of the Statute, it cannot sit over the decision of the Government and as such, the submission on this score laid on behalf of the management fails.

13. Lastly, it is contended on behalf of the management that the disputants involved herein having agitated their dispute after lapse of 24 years, their claim suffers from serious delays and lapses and thus not tenable at this stage. In the context, he cited a decision of our own Hon'ble High Court in the case of *Birat Chandra Dagara Vrs. Odisha Manganese & Minerals Limited*, reported in 2021(1) OLR 934 and contended that the settled proposition of law being that the law will assist only those who are vigilant about their right and not those who sleep over the same, the dispute in hand is not to be entertained at this stage. *Per contra*, it is contended on behalf of the second party union that the Law of Limitation being not applicable to cases under the Industrial Disputes Act, which is a social welfare legislation intended to protect the interest of the workers employed in various industries, the delay and laches taken as a ground by the management to disentitle the disputants from the reliefs sought for, are not to be taken note of, particularly when the management despite promoting Junior Assistants(W3 Grade) to the post of Senior Assistant(S2 Grade) did not pay any heed to the grievance of the disputants for their promotion from Junior Assistant (W3 Grade) to Senior Assistant (S2 Grade) and promoted them from W3 Grade to W4 Grade in between 2002 and 2005 without there being any change in the designation on the pretext of R&P Rules, 2002.

14. Based on the above arguments, on perusal of record it is ascertained from list of Junior Assistants annexed to the failure report that all the disputants involved herein had joined the first party as Junior Assistants in between 1990 and 1998 i.e. prior to coming into force of the R&P Rules, 2002, but they all have been promoted to W4 Grade in between 2002 and 2005 taking recourse to the said Rules. It further reveals from Ext. 11, the Minutes of the Meeting dated the 8th May 2006 between the parties that on a demand being raised by the second party union the Managing Director had opined that there were some anomalies in the promotions and appointments of the non-executives and accordingly formed a committee to sort out the anomalies and further recognized that Junior Assistants will be placed directly in S2 Grade (Sr.Assistant) instead of W4 Grade with retrospective effect because of the precedents with an instruction that the recommendation of the Committee in connection with the anomalies shall be accepted by the Management. As it further reveals from record, the matter of promotion of some Junior Assistants was under challenge before the Hon'ble Court in OJC No.15035 of 1998 and OJC No. 5881 of 2000 and after implementation of the orders passed in the said OJCs by the Management, the disputants made a representation to the management on 23rd December 2014 (vide Ext.13) claiming their promotion from Grade W3 to Grade S2 with effect from the date they were promoted to W4 Grade and non-consideration of their demand gave rise to the present dispute. In view of what have been stated above, I am not convinced with the submission of the management that there has been delay and laches on the part of the disputants in raising the dispute; the reason being that the facts involved herein is quite different than the facts involved in *Birat Chandra Dagara's case (supra)*. Therefore, the objection raised on the score is found to be not tenable.

15. In view of the discussions held in the preceding paragraphs, the reference is held to be maintainable in this forum.

16. Now coming to the merit of the dispute, it has not only been pleaded but also stated by WW 1, the witnesses examined on behalf of the second party union, that the Management has adopted two different policies for effecting promotion of its Non-executive Employees, inasmuch as, while it has promoted some Junior Assistants (W3 Grade) to the post of Senior Assistants (S2 Grade) namely, P. K. Sahani, P. K. Bhanjadeo, K. C. Jena, Renubala Swain during the period from 1994 to 2014 and Shri Sushil Kumar Barik from Junior Assistant in Grade-W3 to Senior

Assistant in Grade-S2 by virtue of orders dated the 9th October 2013 of the Hon'ble Court passed in OJC No.5881 of 2000, no such weightage was given to the grievance of the second party members for their promotion from W3 Grade to S2 Grade. It has been deposed to by WW1 that on completion of five years in their respective W3 Grade, all the disputants should have been promoted to Senior Assistant in Grade-S2, but the management ignoring the previous practice and contrary to the principles of promotion, promoted all of them to W4 Grade which is a lower grade than Grade-S2 taking recourse to the R&P Rules, 2002 which was not made effective in respect of the Junior Assistants who got promotion as per previous practice, which resulted the disputants to sustain heavy financial loss. He referred to the Minutes of the Meeting dated the 8th May 2006(Ext.11) and stated that despite resolution of their claim in the said meeting their case was not taken into consideration by the management and as such they were discriminated by the authority in the matter of their promotion. He has further deposed that had their case been considered at par with the above named similarly situated workmen, who were promoted from the post of Junior Assistant to Senior Assistant, they would have been promoted to the subsequent promotional posts and consequently would have been benefitted financially with all their career prospects. He has proved Ext.1, the copy of list of different grades of non-executive employees of the first party; Exts. 2 & 3, the, copies of office orders dated the 29th January 94 and 9th May 95 of the first party effecting promotion of Junior Assistants to the rank of Senior Assistants; Ext.4, the copy of the judgment dated 24th September 2013 passed by the Hon'ble Court in OJC No.5881 of 2000; Ext.5, the copy of office order dated 20th June 2014 issued pursuant to the direction of the Hon'ble Court to promote Shri Sushil Kumar Barik from the post of Junior Assistant to Senior Assistant; Exts. 6 to 10, the copies of office orders dated 26th October 2002, 13th February 2003, 20th October 2003, 31st May 2004 and 20th September 2005 whereby the disputants were promoted to Grade-W4/ given the scale of pay of Grade-W4; Ext. 11, the copy of the Minutes of the Meeting dated the 8th May 2006 between the parties showing a decision to have been taken by the Managing Director for promotion of the Junior Assistants directly in Grade-S2 i.e., Senior Assistant; Ext.12, the copy of office order dated the 11st August 2006 whereby it was decided by the management that all promotions effected on or after 26th October 2002 under the R&P Rules,2002 would be converted to a regular promotion as one time settlement from the respective dates with appropriate designation/re-designation; Ext.13, the copy of grievance dated the 23rd December 2014 of the disputants addressed to the Chairman of the first party; Ext. 14, the copy of representation of the disputants dated the 12th December 2015 addressed to the General Secretary/President of the Union; Ext. 15, the copy of orders of the Hon'ble Court dated the 27th September 2022 passed in W.A. No. 550 of 2015; Ext.16, copy of letter of the first party addressed to the second party union informing that as a part of implementation process of the Board of Directors decision dated 20th June 2022 and 22th September 2022, draft Form-K and joint petitions have been handed over to the Union to close the instant proceeding before this Tribunal and Ext. 17, the copy of letter of the first party dated the 4th April 2023 addressed to the second party union clarifying that the issue of promotion anomaly of Junior Assistant (W3) to Senior Assistant (S2) has already been resolved by the Board of Directors in their 226th meeting held on 20th June 2023 and to give effect to the decision of the Board of Directors, the I.D. Case No.01 of 2019 (i.e the instant proceeding) filed by the Union needs to be withdrawn. WW 1 was cross examined at length by the first party, but the management except confronting Ext. A i.e the copy of the complaint of the Union before the DLO, Khurda to WW 1 and putting a suggestion that the present reference is not in accordance with the complaint of the Union, could not be able to elicit anything to discredit his version in the examination in chief or the documents cited by him on behalf of the union.



WW 2 in his examination in chief has stated that during pendency of the present dispute he has attained the age of superannuation and three of the involved disputants have expired whose names find place at Sl. No. 11 (Jaganibash Pattnaik, S/o Late Siba prasad Pattnaik); Sl. No. 23 (Lingaraj Sa, S/o Late Debarchan Sa); Sl. No. 29 (Dambarudhar Jena, S/o Late Manu Jena) and their legal heirs have been arrayed as parties in, this case. He deposed that although during pendency of the dispute the management proposed to settle the dispute and accordingly a draft settlement was prepared, yet the same was not acted upon, as because the management did not agree to take care of the interest of the above named retired and deceased employees. He deposed that they all are entitled to the promotional benefits as indicated in their claim statement. In cross-examination WW 2 deposed that none of them have accepted promotion pursuant to coming into force of the R&P Rules, 2002, but he admitted that on attaining the age of superannuation he retired as an Operator. He denied the suggestion of the first party that 31 out of the 39 disputants have accepted the Promotion Rules and enjoyed promotional benefits without any objection.

The first party in its turn has examined Shri Krutibash Padhi, its Manager (HR & Admin.) who has simply deposed in his examination in chief reiterating the stand taken in the written statement. In support of the assertions made in the written statement, MW1 has filed and proved Photocopy of letter dated the 26th December 2015 of Dhruba Charan Sahoo, General Secretary addressed to the DLO, Khurda, Bhubaneswar(Ext. A); Photocopy of Order No. 9, dated the 22nd June 2015 of the Hon'ble Court passed in W.P.(C) No. 5197 of 2002 (Ext.B); Photocopy of Corporatization Agreement, 1996 between the Government of Odisha and OPGC (Ext.C); Photocopy of Recruitment and Promotion Rules, 2002 for Non-Executives (Ext.D); Photocopy of orders of promotion and retirement relieve orders in respect of some of the disputants to indicate their designations (Ext. E) and the letter of authorization of the management in favour of Shri Krutibash Padhi, Manager-HR & Admin. (Ext.F). In cross-examination, however, he has admitted that the disputants involved herein have claimed promotional benefits from Junior Assistant (W3 Grade) to Senior Assistant (S2 Grade) at par with the promotion given to some of the similarly situated employees in the year 1994 and that the Non-Executive Promotion Rules came into existence in the year 2002. He feigned his knowledge as to if the *locus standi* of Shri Dhruba Charan Sahoo, General Secretary of the Union for filing the present dispute has been challenged in any forum and that if the maintainability of the present reference has ever been challenged before the Hon'ble Court. Further he has fairly admitted in cross-examination that the Recruitment & Promotion Rules, 2002 for non-executives (Ext.D) is not a subject matter of challenge in the present dispute. It further reveals from his cross-examination that the disputants while availing promotion from time to time have also ventilated their grievance to the management for promotion from W-3 to S-2 Grade. Though he could not say as to if the disputants have availed promotions on protest, but again stated denying the suggestion that the disputants have availed the promotion on protest. In Para. 53 of his cross-examination MW1 has stated that without referring to the original document he is not in a position to say if the proposal for promotion of Junior Assistants from W-3 Grade to S-2 Grade before 2002 was considered appropriate in the 226th meeting dated the 20th June 2022 of the Board of Directors and that the promotion of Junior Assistant from W-3 to W-4 was inappropriate. He admitted Ext.16 to be the photocopy of the letter of the management dated the 31st October 2022 addressed to the General Secretary of the Union to resolve the Junior Assistant issue involved in the present dispute in accordance with the outcome of the 226th meeting of the Board of Directors and so also Ext.17 to be the photocopy of letter of the General Manager,

HR addressed to the General Secretary of the Union suggesting withdrawal of I.D. Case No. 01 of 2019 in view of settlement of issue of promotion of Junior Assistant from W-3 Grade to Senior Assistant S-2 Grade in the 226th meeting of the Board of Directors held on 20th June 2022. He also fairly admitted during cross-examination that the issue of the disputants has not yet been resolved and that the disputants who have retired and died during pendency of the dispute have not yet received any financial benefit in terms of their promotion as claimed in the present dispute.

17. As is gathered from the evidence as discussed above, prior to coming into force of the R&P Rules, 2002, the management as on principle was promoting Junior Assistants of W-3 Grade to the post of Senior Assistants of S-2 Grade and also later on and keeping in view that disparity, it was resolved in the Minutes of Meeting, dated the 8th May 2006 held between the management and the Union (Ext. 11) to resolve the issue by a Committee and further in the said Meeting the Managing Director of the first party recognized that Junior Assistants will be placed directly in S-2 Grade (Sr. Asst.) instead of W-4 Grade with retrospective effect because of the precedents. Further, as it reveals from Ext. 17, the Board of Directors in their 226th meeting had already resolved the said issue and in order to give effect to the said decision the General Manager, (HR) vide letter dated the 4th April 2023 clarified the above aspect to the General Secretary of the Union. Besides, it is also noteworthy to mention that pursuant to the issues raised by the second party union, the General Manager (HR) also intimated to the Union regarding the action taken on the Junior Assistant issue to the effect that "As a part of implementation process of the BOD's decision, dated the 20th June 2022 and 22nd September 2022 the draft Form-K & joint petitions have been handed over to the union to close the pending I.D. Case No. 1/2019". The management, on the other hand, placed reliance on Ext. E series i.e. the orders of promotion issued in respect of some of the disputants and the relieve order in respect of one of the disputants who has in the meantime been retired from service and tried to convince that owing to their acceptance of promotional posts, they are not entitled to agitate a claim which is of a previous period, but at the same time it failed to exhibit any document in support of its stand that while issuance of the promotion orders in favour of the disputants whether they had all accepted the promotional posts voluntarily or without prejudice to their claim advanced in the instant proceeding. Apart from what have been stated above, when it is found that on the consistent demand of the union the issue relating to their promotion from W-3 Grade to S-2 Grade has already been resolved in the Minutes of the Meeting dated the 8th May 2006 (Ext. 11) and it has been stated so by the General Manager (HR) in his letter addressed to the Union vide Ext. 17 and more so, as it reveals from Ext. 16, the union has been advised to file a settlement accordingly before this Tribunal, I find sufficient force behind the claim advanced by the second party union in respect of the disputants involved in the present proceeding and accordingly hold that the denial of promotion to Shri Balunkeswar Mohapatra and 38 others, Junior Assistants (the list of which is annexed to the failure report) to the post of Senior Assistant (S2 Grade) with effect from the dates as mentioned against each is not only illegal but also unjustified. Since the first party, for reasons best known to it, remained content over the issue and did not furnish either the recommendation of the Committee constituted pursuant to Ext. 11, nor the decisions of the Board of Directors on the issue and on the other hand it reveals from Ext. 17 that the issue has already been resolved, I direct the first party to take an immediate step to give promotional benefit to the disputants treating them to be Senior Assistants (S2 Grade) with effect from the dates when they were promoted to W4 Grade. It is made clear that in respect of the disputants, who have expired in the meanwhile, their legal heirs be extended with the financial

benefits on account of the findings arrived at by this Tribunal and further to the disputants, who have retired in the meantime. However, as regards the subsequent promotions as claimed in the reference, the same being dependent upon various factors, such as work performance and subject to the disputants' suitability for shouldering higher responsibilities, it is for the management to consider the same in accordance with the criteria fixed for effecting such promotions in respect of the disputants.

The reference is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA  
24-02-2025  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

BENUDHAR PATRA  
24-02-2025  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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[No. 2619—LESI-IR-ID-0034/2018-LESI]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government